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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,220	02/19/2004	Roland A. Foubert	2340-67880	7404
24197	7590	04/10/2006	EXAMINER	
KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET SUITE 1600 PORTLAND, OR 97204			GRAY, LINDA LAMEY	
			ART UNIT	PAPER NUMBER
			1734	

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/783,220

Applicant(s)

FOUBERT ET AL.

Examiner

Linda L. Gray

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-25 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-25, 28-32, 34, 35 and 37 is/are rejected.
- 7) ☒ Claim(s) 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____</p> | <p>4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|---|---|

Detailed Action

Claim Rejections - 35 USC 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. In view of the response filed 1-17-06 prosecution of the application reopened.

2. Claims 21-24 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergstein (US 2,628,179) in view of Okushita et al. (US 6,422,283 B1).

Claim 21, Bergstein teaches a method for forming cutting edge 16 on a dispensing carton where edge 16 is a film and the carton is paper. The method includes supplying roll 29 of tape 28 to an applicator station at roller 31, applying a length of tape 28 to a length of carton board 21 and laminating tape 28 to board 21, and cutting board 21 and tape 28 lengthwise to separate board 21 into carton blanks and form edge 16 on each blank (c 5, L 25, to c 8, L 64).

Claim 21, Bergstein teaches tape 28 to include an adhesive on one side (c 6, L 14-19); however, Bergstein does not teach tape 28 to be a polymeric material, instead of metal.

Okushita et al. teach a method for forming cutting edge 7a on dispensing carton 1 by cutting a cutter having edge 7a from a tape (Fig 1-2, 6-14; c 8, Second Embodiment). Okushita et al. teach using plastic for tape S instead of the art recognized metal alternative for improved wound prevention and incineration of the cutter (c 1, L 24-43).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that tape 28 be a polymeric material, instead of metal, because Okushita et al. teach using such for a carton cutter instead of the art recognized metal alternative for improved wound prevention and incineration of the cutter.

Claim 22, Bergstein teaches that cutting board 21 and tape 28 forms a serrated edge in tape 28 and along the cutting edge of each blank (see Fig 1 also). **Claim 23**, Bergstein teaches the blanks include front, bottom, and rear panels 1, 2, and 3, respectively, as well as lid 4 (see Figs 1 and 3 also). **Claim 24**, Bergstein teaches that edge 16 is formed in panel 1 (see Figs 1 and 3 also). **Claim 28**, Bergstein teaches board 21 and tape 28 to be cut simultaneously such that tape 28 and panel 1 each have a matching profile that together form edge 16 (see Figs 1, 3, 9, and 10 also). **Claim 29**, Bergstein teaches that tape 28 is applied in registry with predetermined adjacent edges of the blanks (see Figs 10 and 11 also) cut from boards 21. **Claim 31**, Bergstein teaches tape 28 to have a thickness of 0.003 to 0.010 inches (0.0762 to 0.254 mm).

***Claim 30**, which depends from 21, Bergstein teaches applying adhesive at coater 30 after unwinding from roll 29 and does not teach that tape 28 includes the adhesive already.*

However, Okushita et al. teach in the same art of applying a cutting edge to a carton that the tape already includes the adhesive with the use of liner S1 (c8, Second Embodiment).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that tape 28 includes the adhesive already because Okushita teach in the same art of applying a cutting edge to a carton that it is conventional that the tape that forms the cutting edge already includes the adhesive with the use of a liner where such in Bergstein would eliminate the use of coater 30.

3. Claims 25 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergstein in view of Okushita et al. as applied to claims 21-24 and 28-31 above, and further in view of Johnson (EP 0 776 848 A2).

***Claims 25 and 35**, Bergstein in view of Okushita et al. teach a polymeric cutter but not that the polymeric material is polyester, polyethylene, or polypropylene.*

Johnson teaches in the same art of applying a separate cutting edge to a carton that the polymeric material for the polymeric cutter can be polyester, polyethylene, or polypropylene (p 3, L 43-48).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein in view of Okushita et al. that the polymeric

material for the polymeric cutter be polyester, polyethylene, or polypropylene because it is obvious to use a material which is conventional and successful in the same art. Since the material for the cutter is the same as presently claim, the cutter is considered to have a heat resistance between 160°F to 350°F as claimed.

4. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bergstein in view of Okushita et al. as applied to claims 21-24 and 28-31 above, and further in view of Kerr (US 3,729,648).

Claim 34, Bergstein does not teach tape 28 to be corona treated.

Kerr teaches corona treatment of a web to enhance coatability of an adhesive thereto (c 1, L 10-31).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bergstein that tape 28 is corona treated to enhance attachment of the adhesive thereto.

5. Claims 21-24, 28-29, 31-32, and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcalus (US 1,843,429) in view of Okushita et al.

Claim 21, Marcalus teaches a method for forming a cutting edge on a dispensing carton where the edge is a film and the carton is of paper. The method includes supplying roll 14 of tape C to an applicator at roller 1, applying a length of tape C to a length of carton board B and laminating tape C to board B, and cutting board B and tape C lengthwise to separate board B into carton blanks and form the edge of each bland (p 1, c 2, L 54, to p 2, c 2, L 75).

Claim 21, Marcalus teaches tape C to include an adhesive on one side (p 1, c 2, L 86, to p 2, c 1, L 10); however, Marcalus does not teach tape C to be a polymeric material, instead of paper.

Okushita et al. teach a method for forming cutting edge 7a on dispensing carton 1 by cutting a cutter having edge 7a from a tape (Fig 1-2, 6-14; c 8, Second Embodiment). Okushita et al. teach using plastic for tape S or paper instead of the art recognized metal alternative for improved wound prevention and incineration of the cutter (c 1, L 24-43). Marcalus desires to use paper over metal as well (c 1).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Marcalus that tape C be a polymeric material, instead of paper, because Okushita et al. teach using either a polymeric material or paper for a carton cutter and both Marcalus and Okushita et al. specifically recite these materials to be better than the art recognized metal alternative for improved wound prevention and incineration.

Claim 22, Marcalus teaches that cutting of board B and tape C forms a serrated edge in tape C and along the cutting edge of each blank. **Claim 23**, Marcalus teaches the blanks include front, bottom, and rear panels, as well as lids (see Fig 3 also). **Claim 24**, Marcalus teaches that the edge is formed in the front panel (see Fig 3 also). **Claim 28**, Marcalus teaches board B and tape C to be cut simultaneously such that tape C and the front panel each have a matching profile that together form the edge. **Claim 29**, Marcalus teaches that tape C is applied in registry with predetermined adjacent edges of the blanks cut from boards B.

Claim 31, *Marcalus does not teach tape C to be about 2 mils (0.05 mm) to about 7 mils (0.18 mm).*

However, such cutters thicknesses are conventional in the art and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Marcalus optimization of the thickness of tape C to include the conventional values for the optimal degree of cutting.

Claim 32, Marcalus suggests a hot melt adhesive type at page 1, line 86, to page 2, line 10. **Claims 36-37**, the cutting edge projects above the edge of the front panel (p 2, c 2, second full para), and this portion is free of adhesive (p 2, c 1, L 59, to p 2, c 2, L 70).

6. Claims 25 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcalus in view of Okushita et al. as applied to claims 21-24, 28-29, 31-32, and 36-37 above, and further in view of Johnson.

Claims 25 and 35, Marcalus in view of Okushita et al. teach the polymeric material is polyester, polyethylene, or polypropylene.

In view of Johnson discussed above, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Marcalus in view of Okushita et al. that the polymeric material for the polymeric cutter be polyester, polyethylene, or polypropylene because it is obvious to use a material which is conventional and successful in the same art. Since the material for the cutter is the same as presently claim, the cutter is considered to have a heat resistance between 160°F to 350°F as claimed.

7. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marcalus in view of Okushita et al. as applied to claims 21-24, 28-29, 31-32, and 36-37 above, and further in view of Kerr.

Claim 34, Marcalus does not teach tape C to be corona treated.

In view of Kerr discussed above, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Marcalus that tape C is corona treated to enhance attachment of the adhesive thereto.

Allowable Subject Matter

8. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is an examiner's statement of reasons for the indication of allowable subject matter:

claim 33: Marcalus does not teach that tape C is applied to board B with one or more heated rollers in that Marcalus specifically recites applying tape C using a reciprocating applicator which is not heated.

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Response to Applicant's Comments

10. Applicant's comments filed 1-7-06 have been fully considered. Johnson is withdrawn from the rejection of claim 21 when combined with Bergstein (and Marcalus in a separate statement) in that the tape of Johnson is not cut.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Gray whose telephone number is (571) 272-1228. The examiner can normally be reached Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla, can be reached at (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public Pair. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-1997 (toll-free).

llg

March 7, 2006

Linda D Gray

LINDA GRAY
PRIMARY EXAMINER